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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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|-----------------|-------------|----------------------|---------------------|------------------|

10/658,578

09/09/2003

Ed H. Frank

14181US02

3394

23446 7590 04/20/2007  
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EXAMINER

TRAN, PHUC H

ART UNIT

PAPER NUMBER

2616

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|-----------|---------------|
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3 MONTHS

04/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/658,578

Applicant(s)

FRANK ET AL.

Examiner

PHUC H. TRAN

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/27/05, 3/22/06.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1 and 19 recite a method and a system, respectively. These claims appear to include a judicial exception, namely, a data manipulation or abstract idea. Note that the method steps recited in claim 1 and the elements recited in claims 19 are disclosed by specification and claims 10 as computer instructions. Since there are no practical applications claimed, i.e., no physical transformation taken place, nor a useful, concrete and tangible result being produced, the claims are non-statutory.

In order for a claimed invention to accomplish a practical application, it must produce a “useful, concrete and tangible result” *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02 (see MPEP 2106.II.A). A practical application can be achieved through recitation of “a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan”, or “limited to a practical application within the technological arts” (MPEP 2106 IVB2(b)). Currently, claim meets neither of these criteria. In order to for the claimed process to produce a “useful, concrete and tangible” result, recitation of one or more of the following elements is suggested:

- The manipulation of data that represents a physical object or activity transformed from outside the computer (MPEP 2106 IVB2(b)(i)).

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- A recitation of a physical transformations outside the computer, for example in the form of pre or post computer processing activity (MPEP 2106 IVB2(b)(i)).
- A direct recitation of a practical application in the technological arts (MPEP 2106 IVB2(b)(ii)).

**\*Note:** To overcome the rejection, it is suggested to the applicant to amend the claim 10 to be written in terms of "computer readable medium encoded with computer program".

#### ***Conclusion***

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO form 892.

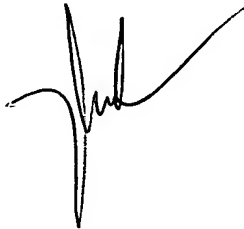
Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H. TRAN whose telephone number is (571) 272-3172. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHI PHAM can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Phuc Tran  
Assistant Examiner  
Art Unit 2616

A handwritten signature in black ink, appearing to be 'Phuc Tran', written over a horizontal line.

P.t  
4/14/07